UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,551	03/31/2004	Patrick R. Guido	4541-016	7434

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EXAMINER
ORR, HENRY W

ART UNIT	PAPER NUMBER
2176	

MAIL DATE	DELIVERY MODE
03/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

<table>
<tr><td rowspan="2">Advisory Action
Before the Filing of an Appeal Brief</td><td>Application No.
10/814,551</td><td>Applicant(s)
GUIDO ET AL.</td></tr>
<tr><td>Examiner
Henry Orr</td><td>Art Unit
2176</td></tr>
</table>

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>03 March 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b)☐ They raise the issue of new matter (see NOTE below);

  (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: _____.

  Claim(s) objected to: _____.

  Claim(s) rejected: <u>*1-28*</u>.

  Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Rachna Singh/
Primary Examiner, Art Unit 2176

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that the cited portion of Diedrichsen (see col. 1 , lines 63-65), which states, "Different applications can also be organized into groups of applications, each of which are related function." is not remotely related to Diedrichsen's inventions of linking parent/child windows for visual identification or of altering the z-order of parent/child windows together because the cited portion appears in the Background section of Diedrichsen's written description, before the concept of z-ordering is introduced, and certainly before any idea of linking parent/child windows and altering the z-order of such windows together is introduced. (See Response p. 2 2nd full paragraph)

Examiner respectfully disagrees.

Firstly, the cited portion appears in the Background section of Diedrichsen's written description to indicate the state of the art at the time of the invention.
Secondly, although, the cited portion appears in Diedrichsen's disclosure before the concept of z-ordering is introduced, this does not indicate that the concept of z-ordering did not exist in the state of the art at the time of the instant invention. For instance, the applied Ashe's reference, filed before the Diedrichsen reference discloses the concept of z-ordering in the Background section. Therefore, the concept of z-ordering was well known in the art prior to Diedrichsen reference being filed. Also, the applied Ashe's reference, patented before the instant application further discloses "ideas" relating to linking parent/child windows and altering the z-order of such windows together (see Ashe; col. 8 lines 43-64, Figure 5), which indicates that these "ideas" were well known in the art prior to the instant application being filed.
Therefore, the cited portion being stated in the Background section of Diedrichsen's disclosure before the concept of z-ordering or any idea of linking parent/child windows and altering the z-order of such windows together is irrelevant because these concepts and ideas were well known in the art before the instant application was filed.

Applicant argues that Diedrichsen discloses precisely one mechanism for linking windows to alter their z-order together: when an application spawns a child, it stores a pointer to the child in a private list. Diedrichsen discloses no other mechanism for altering the z-order of a group of windows together. It is impossible for Diedrichsen to simultaneously alter the z-order of a group of windows running independent applications (see Response pgs. 2-3).

Examiner respectfully disagrees.

Diedrichsen teaches that the user can always tell which objects are related to the selected window, even if there are more instances of the same application running. Examiner submits that two instances of the same application can reasonably be interpreted as two independent applications. For example, when one instance of the application is closed, the other instance of the same application stays open; therefore the two instances are "independent" from each other. Therefore, it is not impossible for Diedrichsen to simultaneously alter the z-order of a group of windows running independent applications.

Applicant asserts Applications which are related by function are not independent applications, by definition. Applicants' specification provides the example of a web browser, email client, and word processor being grouped together. These applications are completely unrelated by function (see Response p. 3).

Examiner notes that applicant's specification does NOT disclose a definition for the term "independent". The web browser, email client, and word processor are merely examples of "independent" applications. Examiner interprets the scope of the term "independent" to have broader coverage than "unrelated by function". For example, as stated above, when one instance of an application is closed, the other instance of the same application stays open exemplifies multiple "independent" application instances.

Applicant asserts that the cited portion of Ashe (see col. 2 lines 10-15), which states "A window layer's priority class defines where in the z-order the window layer can be displayed. For example, a window layer of priority class "2" e.g. a screen saver, will always appear in front of a window layer of priority class "3", e.g. an application program, while multiple window layers of priority class "3", e.g. a word processing application and a spreadsheet application, can overlie each other in the z-order", does not disclose any grouping at all (see Response pgs. 3-4).

Examiner respectfully disagrees.

Ashe clearly teaches a "group" of two applications (e.g. word processing and spreadsheet) having the priority class of "3". Therefore, another "group" of applications may have a priority class of "2". The "group" of applications having a priority class of "2" will always appear in front of the "group" of applications with priority class of "3" as suggested by the cited portion of Ashe.

For the reasons stated above, Examiner maintains Prior Art Rejections.